UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

June 12, 2007

REPLY TO THE ATTENTION OF:

C-14J

VIA CERTIFIED MAIL

Thomas Hilbert
Waste Group
2652 Eastrock Drive, Suite 2B
Rockford, IL 61109

Re: Pagel's Pit Superfund Site, Winnebago County, Illinois, Institutional Controls Investigation/Study – Civil Action No. 92-C-20346

Dear Mr. Hilbert:

The U.S. Environmental Protection Agency (U.S. EPA) is undertaking an initiative to evaluate institutional controls (ICs) at Superfund sites. ICs may be needed to restrict uses of sites where on-site hazardous substances remain above levels that allow for unlimited use and unrestricted exposure (UU/UE). ICs may be necessary to prevent interference with Superfund remedy components. A description of U.S. EPA's IC initiative may be found in "Strategy to Ensure Institutional Control Implementation at Superfund Sites", OSWER No. 9355.0-106 (2004), http://www.epa.gov/ superfund/action/ic/strategy.htm.

U.S. EPA is seeking the cooperation of potentially responsible parties as part of this nationwide effort. The purpose of this letter is to seek your assistance in evaluating ICs for the Pagel's Pit Superfund Site located in Winnebago County, Illinois. Specifically, U.S. EPA is requesting that you submit an IC investigation/study to U.S. EPA within 45 days of the receipt of this letter. Please provide U.S. EPA with a notice of intent to comply with this request within 10 days of the date of receipt of this letter.

The IC investigation/study will be used by U.S. EPA in its current review of the remedial action for the Site pursuant to Section 121 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9621. Section 121 of CERCLA mandates that, no less often than every five years, U.S. EPA must review remedial actions where hazardous substances, pollutants or contaminants remain in place to assure that human health and the environment are being protected by the remedial action.

As you know, the "Class A Settling Defendants" have implemented the remedial design and remedial action for the Site pursuant to the Consent Decree, Civil Action No. 92-C-20346, entered February 11, 1993 (Consent Decree). The Site remedy does not allow unlimited use and

unrestricted exposure. The long-term protectiveness, effectiveness and integrity of the remedy depends on compliance with ICs that implement the following land/groundwater restrictions:

Restricted Areas (Areas that do not allow unlimited use or unrestricted exposure)	**Institutional Control Objective /Restriction/Performance Standard**
1. Area of Site where the groundwater plume exceeds performance standards (MCLs)	prohibit consumptive use of the groundwater plume area until performance standards are achieved
2. Area of Site with where RCRA subtitle D compliant cap was constructed	ensure that the integrity of RCRA subtitle D compliant cap is not compromised
3. Site-wide	prohibit residential use of the areas where residential clean-up levels were not achieved, prohibit agricultural use of the site unless approved by U.S. EPA, and prohibit construction or installation of any structures unless approved by U.S. EPA
4. Site-wide.	no interference with the operation and maintenance of treatment and monitoring systems required by the remedial action

Under Paragraph 20 of Section VIII (EPA Periodic Review) of the Consent Decree, U.S. EPA shall review the remedial action at the Facility at least every five years to assure that human health and the environment are being protected by the remedial action. If upon such review, U.S. EPA determines that further response action is appropriate, then U.S. EPA may require such action. Under Paragraph 29 of Section X (Access And Deed Restrictions),U.S. EPA determined that certain institutional controls were necessary to effectuate the remedial action and to protect public health or welfare or the environment. The IC investigation/study is necessary to assure that implementation of the remedial action, including institutional controls, is protective of human health and the environment. The IC investigation/study also is an appropriate modification to the RD/RA Work Plan, which includes operation and maintenance of the remedial action, because institutional controls are necessary to achieve and maintain the performance standards of the remedial action and the effectiveness of the remedy set forth in the ROD.

The goal of the IC investigation/study is to: a) evaluate whether institutional controls currently exist that adequately implement the objectives/performance standards described above; b) identify and recommend any corrective measures to existing ICs necessary for their effectiveness; and c) recommend any new or additional ICs necessary to achieve and maintain the objectives and/or performance standards described above.

IC Study Report Requirements

Within 45 days of receipt of this letter, please submit a draft IC investigation/study report to U.S. EPA for review and approval that includes the following minimum requirements:

1. **Demonstrate that existing proprietary controls have been properly recorded and are free and clear of all liens and encumbrances.** Such a demonstration shall include: a) a title insurance commitment using ALTA Commitment form 1982 as amended "for information only purposes" by a title company; b) copies of documents referenced in the title commitment; c) copies of the existing proprietary controls showing the recording stamp(s); d) copies of encumbrances, utility right of ways, leases and subleases impacting restricted areas; e) map and GIS information that identifies parcel numbers and boundaries of current encumbrances (such as utility easements) that impact restricted areas; and f) copies of subrogation agreements for encumbrances.

2. **Demonstrate that the existing proprietary controls were signed by a person or entity that owned the property at the time of signature.**

3. **Demonstrate whether any governmental controls are currently in effect.** Provide a current, dated and official copy of any existing governmental controls, such as ordinances, codes, statutes, zoning, etc., that implement the IC objectives for the restricted areas described in the Table above; and discuss any sunset provisions in those governmental controls.

4. **Evaluate whether existing controls cover the entire area that needs to be restricted.** This evaluation shall include:

   a. Discuss what information was used to depict the restricted area covered by the control. Is the restricted area and institutional control based on reliable and up-to-date information, data and maps?

   b. Provide map and GIS information of restricted areas identified in the Table above, including all areas where groundwater exceeds performance standards, where the soil cover that needs protection is located, and where residential use is not allowed, based on current information and up-to-date monitoring information.

   c. Provide map and GIS information of the legally described area covered by any existing proprietary controls and/or regulated by existing governmental controls.

   d. Provide maps and GIS that overlay the information of 3.b and 3.c above.

All maps and GIS information must identify: site boundaries, streets, property ownership and assessor's parcel numbers or other plat or survey information. Identify the accuracy of the GIS coordinates (i.e. within x.xx feet). Format the GIS coordinates into an ESRI polygon-shape file. The shape file shall be projected into the UTM, NAD 83 projection system. Please identify the UTM zone. Provide an attribute name in the shape file for each polygon submitted. For

example: "site boundary", "residential use prohibited", "groundwater use prohibited" and "interference with cover prohibited";

5. **Assess objectives, restrictions and performance standards of the institutional controls.** Discuss whether all IC objectives/performance standards/restrictions described in the Table above are clearly stated in the control;

6. **Assess monitoring and compliance with institutional controls.**

a. Discuss how, when and by whom compliance with the institutional controls is monitored. Discuss whether the results of the IC monitoring are routinely and promptly shared with U.S. EPA and the State. Discuss whether there are measures in place to ensure that modifications to the restriction require U.S. EPA and State approval. Discuss whether the property is being used in a manner consistent with the restrictions. Summarize results of site inspection and interviews with owners, lessees and other holders of property interests. Are owners, lessees and other holders of property interests aware of and complying with the restrictions?

b. If any governmental controls exist, where can information about them be obtained? How do affected parties such as homeowners, contractors and resource users obtain information about the governmental control? Are affected parties and resource users aware of and do they understand the restrictions described above? Have there been breaches of use restrictions described above. If so, how were they addressed by the governmental agency?

7. **Discuss effectiveness of institutional controls.** Discuss whether the proprietary controls "run with the land" (i.e. restrictions are binding on subsequent property owners) under applicable state law.

Assess whether the controls are effective in the short term in maintaining the objectives, restrictions, and/or performance standards in the Table above. Assess whether the control will be effective in the long term in maintaining the objectives, restrictions, and/or performance standards in the Table above. Discuss whether existing ICs are preventing exposure. Discuss whether land and/or resource use has changed since execution of the ROD? Is current or expected land use consistent with local governments' master plans? Does the property owner have any plans to sell or transfer the property? Are there any new developments, either constructed or planned, in the area? Are there any new construction permits pending? If so, what are the plans regarding property's ICs? Discuss how the current land and resource uses relate to exposure assumptions and risk calculations. Discuss whether there are any unintended consequences resulting from the use of a particular restriction.

8. **Recommendations.** Propose any corrections to existing institutional controls that are necessary to ensure that the land and groundwater use restrictions described in the Table above are implemented correctly, are maintained, and will be protective in the short term and the long term. Propose controls for remaining areas that do not support unlimited use and unrestricted

exposure but are not covered by existing controls and include a title commitment for any proposed proprietary control. Propose subrogation agreements for any encumbrance that impacts restricted areas. Propose monitoring requirements and modifications to the Operation and Maintenance Plan to ensure that ICs are maintained and complied with in the short term and in the long term. The monitoring plan must include a schedule and an annual certification to U.S. EPA that ICs are in place and remain effective.

Please provide U.S. EPA with a notice of intent to comply with this request within 10 days of the date of receipt of this letter. If you have any questions concerning this request, please contact Nola Hicks, Associate Regional Counsel, at (312) 886-7949 or Bernard Schorle, Remedial Project Manager, (312) 886-4746.

Sincerely,

Bernard J. Schorle
Remedial Project Manager
Superfund Division

Nola Hicks
Associate Regional Counsel
Office of Regional Counsel

cc: Fred W. Nika, Jr., Illinois Environmental Protection Agency

bcc: Sheri Bianchin, IC Coordinator
Jan Carlson, IC Legal Coordinator